

# Senate Study Bill 3129

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
LOCAL GOVERNMENT BILL BY  
CO=CHAIRPERSON SHULL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to city contracts for public improvements.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
3 TLSB 5672XK 81  
4 eg/je/5

PAG LIN

1 1 Section 1. Section 384.96, Code 2005, is amended to read  
1 2 as follows:

1 3 384.96 SEALED BIDS.

1 4 When the estimated total cost to a city of a public  
1 5 improvement exceeds the sum of ~~twenty-five~~ one hundred  
1 6 thousand dollars, the governing body shall advertise for  
1 7 sealed bids for the proposed improvement by publishing a  
1 8 notice to bidders as provided in section 362.3, except that  
1 9 the notice to bidders may be published more than twenty days  
1 10 but not more than forty-five days before the date for filing  
1 11 bids.

1 12 Sec. 2. Section 384.100, unnumbered paragraph 1, Code  
1 13 2005, is amended to read as follows:

1 14 The governing body shall open, announce the amount of the  
1 15 bids, and file all proposals received, at the time and place  
1 16 specified in the notice to bidders. The governing body may,  
1 17 by resolution, award the contract for the public improvement  
1 18 to the bidder submitting the best bid, determined as provided  
1 19 in section 384.99, or it may reject all bids received, fix a  
1 20 new date for receiving bids, and order publication of a new  
1 21 notice to bidders. The bid security furnished by the  
1 22 successful bidder must be retained by the governing body until  
1 23 the approved contract form has been executed, and a bond filed  
1 24 by the bidder guaranteeing the performance of the contract,  
1 25 and the contract and bond, have been approved by the governing  
1 26 body. ~~The Except as provided in section 384.104, the~~  
1 27 provisions of chapter 573, ~~where applicable,~~ apply to  
1 28 contracts awarded under this division.

1 29 Sec. 3. Section 384.102, Code 2005, is amended to read as  
1 30 follows:

1 31 384.102 WHEN HEARING NECESSARY.

1 32 When the estimated total cost of a public improvement  
1 33 exceeds the sum of ~~twenty-five~~ one hundred thousand dollars,  
1 34 the governing body shall not enter into a contract for the  
1 35 improvement until it has held a public hearing on the proposed  
2 1 plans, specifications, and form of contract, and estimated  
2 2 cost for the improvement. Notice of the hearing must be  
2 3 published as provided in section 362.3. At the hearing any  
2 4 interested person may appear and file objections to the  
2 5 proposed plans, specifications, contract, or estimated cost of  
2 6 the improvement. After hearing objections, the governing body  
2 7 shall by resolution enter its decision on the plans,  
2 8 specifications, contract, and estimated cost.

2 9 Sec. 4. NEW SECTION. 384.104 EARLY RELEASE OF RETENTION.

2 10 1. Payments made by a city for the construction of public  
2 11 improvements shall be made in accordance with the provisions  
2 12 of chapter 573. The payment of retained funds shall be made  
2 13 as provided in section 573.14, except that:

2 14 a. At any time after all or any part of the work is  
2 15 substantially completed in accordance with paragraph "c", the  
2 16 contractor may request the release of all or part of the  
2 17 retainage owed. The request shall be accompanied by a sworn

2 18 statement of the contractor that, ten days prior to filing the  
2 19 request, the contractor gave notice as provided in subsection  
2 20 4 to subcontractors, sub-subcontractors, and suppliers of  
2 21 which the contractor has actual knowledge.

2 22 b. Upon receipt of the request, the city may release all  
2 23 or part of the unpaid funds. Retainage that is approved as  
2 24 payable shall be paid at the time of the next monthly payment  
2 25 or within thirty days, whichever is sooner. If partial  
2 26 retainage is released pursuant to a contractor's request, no  
2 27 retainage shall be subsequently held based on that portion of  
2 28 the work. If within thirty days of when payment becomes due  
2 29 the city does not release the retainage due, interest shall  
2 30 accrue on the retainage amount due as provided in section  
2 31 573.14 until that amount is paid.

2 32 c. If at the time of the request for the retainage there  
2 33 are remaining or incomplete minor items, an amount equal to  
2 34 two hundred percent of the value of each remaining or  
2 35 incomplete item, as determined by the city's authorized  
3 1 contract representative, may be withheld until such item or  
3 2 items are completed.

3 3 d. An itemization of the remaining or incomplete items, or  
3 4 the reason that the request for release of the retainage was  
3 5 denied, shall be provided to the contractor in writing within  
3 6 thirty calendar days of the receipt of the request for release  
3 7 of retainage.

3 8 2. For purposes of this section, "authorized contract  
3 9 representative" means the architect or engineer who is in  
3 10 charge of the project and chosen by the city to represent its  
3 11 interests, or if there is no architect or engineer, then such  
3 12 other contract representative or officer as designated in the  
3 13 contract documents as the party representing the city's  
3 14 interest regarding administration and oversight of the  
3 15 project.

3 16 3. For purposes of this section, "substantially completed"  
3 17 means the first date on which any of the following occurs:

3 18 a. Completion of the project or when the work has been  
3 19 substantially completed in general accordance with the terms  
3 20 and provisions of the contract.

3 21 b. The work or the portion designated is sufficiently  
3 22 complete in accordance with the requirements of the contract  
3 23 so the city can occupy or utilize the work for its intended  
3 24 purpose.

3 25 c. The project is certified as having been substantially  
3 26 completed by either of the following:

3 27 (1) The architect or engineer authorized to make such  
3 28 certification.

3 29 (2) The contracting authority representing the city.

3 30 4. The notice required under subsection 1 shall read as  
3 31 follows:

3 32 "NOTICE OF CONTRACTOR'S REQUEST FOR EARLY RELEASE OF  
3 33 RETAINED FUNDS

3 34 You are hereby notified that [name of contractor] will be  
3 35 requesting an early release of funds on a project designated  
4 1 as [name of project] for which you have or may have provided  
4 2 labor or materials. The request will be made pursuant to Iowa  
4 3 Code section 384.104. The request may be filed with the [name  
4 4 of city] after ten calendar days from the date of this notice.  
4 5 The purpose of the request is to have [name of city] release  
4 6 and pay funds for all work that has been performed and charged  
4 7 to [name of city] as of the date of this notice. This notice  
4 8 is provided in accordance with Iowa Code section 384.104."

4 9 5. Each contractor or subcontractor shall withhold  
4 10 retainage, if at all, in the same manner as retainage is  
4 11 withheld from the contractor or subcontractor; and each  
4 12 subcontractor shall pass through all retainage payments to  
4 13 lower tier subcontractors in accordance with the provisions of  
4 14 chapter 573.

4 15 Sec. 5. Section 573.14, unnumbered paragraph 2, Code  
4 16 Supplement 2005, is amended to read as follows:

4 17 The public corporation shall order payment of any amount  
4 18 due the contractor to be made in accordance with the terms of  
4 19 the contract. Except as provided in section 573.12 for  
4 20 progress payments, failure to make payment pursuant to this  
4 21 section, of any amount due the contractor, within forty days,  
4 22 unless a greater time period not to exceed fifty days is  
4 23 specified in the contract documents, after the work under the  
4 24 contract has been completed and if the work has been accepted  
4 25 and all required materials, certifications, and other  
4 26 documentations required to be submitted by the contractor and  
4 27 specified by the contract have been furnished the awarding  
4 28 public corporation by the contractor, shall cause interest to

4 29 accrue on the amount unpaid to the benefit of the unpaid  
4 30 party. Interest shall accrue during the period commencing the  
4 31 thirty-first day following the completion of work and  
4 32 satisfaction of the other requirements of this paragraph and  
4 33 ending on the date of payment. The rate of interest shall be  
4 34 determined by the period of time during which interest  
4 35 accrues, and shall be the same as the rate of interest that is  
5 1 in effect under section 12C.6, as of the day interest begins  
5 2 to accrue, for a deposit of public funds for a comparable  
5 3 period of time. However, for institutions governed pursuant  
5 4 to chapter 262 and for cities, the rate of interest shall be  
5 5 determined by the period of time during which interest  
5 6 accrues, and shall be calculated as the prime rate plus one  
5 7 percent per year as of the day interest begins to accrue.  
5 8 This paragraph does not abridge any of the rights set forth in  
5 9 section 573.16. Except as provided in sections 573.12 and  
5 10 573.16, interest shall not accrue on funds retained by the  
5 11 public corporation to satisfy the provisions of this section  
5 12 regarding claims on file. This chapter does not apply if the  
5 13 public corporation has entered into a contract with the  
5 14 federal government or accepted a federal grant which is  
5 15 governed by federal law or rules that are contrary to the  
5 16 provisions of this chapter. For purposes of this unnumbered  
5 17 paragraph, "prime rate" means the prime rate charged by banks  
5 18 on short-term business loans, as determined by the board of  
5 19 governors of the federal reserve system and published in the  
5 20 federal reserve bulletin.

5 21 EXPLANATION

5 22 Currently, the city must comply with contract letting  
5 23 procedures, including a public hearing, when the total  
5 24 estimated cost of a public improvement exceeds \$25,000. This  
5 25 bill raises that threshold amount to \$100,000. This change  
5 26 will impact counties and rural water districts that are  
5 27 required to follow the same contract letting procedures.

5 28 For the construction of a public improvement, state and  
5 29 local governmental entities are required to comply with Code  
5 30 chapter 573 when making payments to a contractor for the work  
5 31 performed and the material delivered. A percentage of the  
5 32 contract price is retained from payments to be made to the  
5 33 contractor to create a fund for the subsequent payment of  
5 34 claims on the public improvement. After the public  
5 35 improvement is completed, the retained funds are paid in  
6 1 accordance with Code section 573.14. However, if the contract  
6 2 is 95 percent complete, Code section 573.15A provides for the  
6 3 early payment of retained funds. The bill provides another  
6 4 alternative for such early payment of funds, but only for  
6 5 cities.

6 6 Under the bill, a city may release all or part of the  
6 7 retained funds to a contractor after the work on the public  
6 8 improvement is "substantially completed" as defined. Before a  
6 9 contractor files a request for retained funds, the contractor  
6 10 is required to notify the subcontractors, sub-subcontractors,  
6 11 and suppliers that may have provided labor or materials for  
6 12 the public improvement. The city may approve and pay the  
6 13 contractor's retainage request, or the city may withhold funds  
6 14 if there are minor items that remain to be completed. The  
6 15 city may deny the request; however, the city must provide a  
6 16 written itemization of the remaining or incomplete items or  
6 17 the reason for denying the retainage request.

6 18 If the city fails to timely pay the retainage amount,  
6 19 interest will accrue until the amount is paid. The bill  
6 20 changes the rate of interest for cities. The rate of interest  
6 21 is calculated as the prime rate plus 1 percent per year as of  
6 22 the day interest begins to accrue. The state board of regents  
6 23 is subject to the same rate. Currently, the rate of interest  
6 24 for cities and all other state and local governmental entities  
6 25 is the same as the rate of interest that is in effect under  
6 26 Code section 12C.6, as of the day interest begins to accrue,  
6 27 for a deposit of public funds for a comparable period of time.

6 28 LSB 5672XK 81

6 29 eg:rj/je/5